

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MONADNOCK CONSTRUCTION, INC.,

Plaintiff,

-against-

WESTCHESTER FIRE INSURANCE
COMPANY,

Defendant.

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Case No.: 16 CIV. 00420 (JBW)
ECF Case

**OBJECTIONS AND
DEMAND FOR
COMPLAINT**

Defendant WESTCHESTER FIRE INSURANCE COMPANY (hereinafter “Defendant”), by its attorneys, COZEN O’CONNOR, P.C., pursuant to Federal Rule of Civil Procedure 81, responds herein to the Summons with Notice, dated December 22, 2015, initially filed by Plaintiff MONADNOCK CONSTRUCTION, INC. (hereinafter “Plaintiff”) in New York Supreme Court, Kings County, as follows:

New York Civil Practice Law and Rules (“CPLR”) § 3011 sets forth the types of pleadings permitted in New York state court practice. Pleadings include a complaint, an answer, and a reply, *not* a Summons with Notice. CPLR § 3011. Under CPLR § 3012(b), if a Plaintiff does not serve a complaint with a summons, as the Plaintiff did not do when it filed its Summons with Notice, the Defendant may serve a written demand for a complaint.

Accordingly, and given that Plaintiff has not filed a complaint to which Defendant could respond with an answer, Defendant hereby demands a formal complaint and objects, under Federal Rule of Civil Procedure 81, to proceeding on the basis of a Summons with Notice.

The Summons with Notice filed by Plaintiff is not a complaint under either New York or federal law, and it does not describe claims with sufficient particularity to enable Defendant to respond and determine its defenses. Even if Plaintiff's Summons with Notice were a complaint, its statements fail to state any legal claim or wrongful act by Defendant. Accordingly, Defendant would deny each and every allegation even if it were filed and served as a complaint.

WHEREFORE, defendant WESTCHESTER FIRE INSURANCE COMPANY respectfully demands that Plaintiff serve upon Defendant a complaint and reserves its right to assert its defenses in its answer to a proper complaint.

DATED: NEW YORK, NEW YORK
FEBRUARY 8, 2016

COZEN O'CONNOR

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